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BOOK 17472Pc 181

COVENANT OF DEED RESTRICTION

MAY - 4 1992

Recording Requested By:

American Standard Inc.

When Recorded, Mail to:

Department of Toxic Substances Control  
Region 2  
700 Heinz Avenue  
Berkeley, CA 94710  
Attention: Brent Lamkin  
Site Mitigation Branch

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY  
AMERICAN STANDARD INC. FORMER WASTE DISPOSAL AREA  
SAN PABLO, CA

This Covenant and Agreement ("Covenant") is made on the  
3rd day of April, 1992 by American  
Standard Inc. ("Covenantor"), who is the owner of record of  
certain property situated in San Pablo, County of Contra Costa,  
State of California, described in Exhibit 1 attached hereto and  
incorporated herein by this reference ("the Property") and by  
the California Department of Toxic Substances Control, with  
reference to the following facts:

A. This Property contains hazardous wastes and hazardous  
substances.

B. Description of Facts.

RECORDED AT REQUEST OF  
American Standard Inc

MAY - 4 1992

AT 2 O'CLOCK P. M.  
CONTRA COSTA COUNTY RECORDS  
STEPHEN L. WEIR  
COUNTY RECORDER  
FEE \$

742nd

1 B.1. Contamination of the Property. The Property was the  
 2 site of a waste disposal area used for the disposal of  
 3 manufacturing wastes associated with the facility at 3002 Giant  
 4 Road. Wastewater containing clay slip (china clays, ball clays,  
 5 feldspars, and quartz sand) and glaze (containing china clay,  
 6 feldspar, zinc, lead, tin, zirconium and rare earth elements)  
 7 was pumped into settling pond(s) with an estimated capacity of  
 8 140,000 gallons. The pond(s) were periodically dredged and  
 9 wastes were emplaced on the embankments of the pond(s). Other  
 10 wastes emplaced on the Property also included broken plaster  
 11 molds and scrap porcelain products. Waste was emplaced at the  
 12 Property until 1976 when the associated manufacturing complex  
 13 ceased operations. The maximum levels of lead found in soils  
 14 on the Property is 21,000 mg/kg, while zinc has been detected at  
 15 19,000 mg/kg.

16 B.2. Exposure Pathways. The contaminants addressed in this  
 17 Covenant have been found in soils on the Property. These  
 18 substances are to be contained by the installation of a Cap  
 19 (described in the final Remedial Action Plan [RAP]) dated August  
 20 30, 1991) and the maintenance and monitoring of groundwater  
 21 monitoring wells existing onsite. If this containment system  
 22 were to be damaged by unauthorized excavation, breaching of the  
 23 Cap, or impairment of the groundwater monitoring system,  
 24 occupants of the Property and nearby properties and resident  
 25 occupants could be exposed to the contaminated soils. Exposures  
 26 can take place via in-place contact, surface water runoff, and  
 27 wind dispersal, resulting in dermal contact, inhalation, or  
 ingestion by humans or animals. The risk of public exposure is  
 lessened by distance from contaminants, shortened length of time

1 of exposure, containment of contaminants and mitigation measures  
2 to control exposure. The purpose of the containment and  
3 mitigation measures which shall be used at the Property are to  
4 eliminate any significant risks to human health and the  
5 environment.

6  
7 A description of potential human health and environmental  
8 effects of contaminants found on the Property is described in  
9 Exhibit 2.

10 B.3 Adjacent Land Uses and Population Potentially  
11 Affected. The Property is located in an industrial area  
12 bordering a residential neighborhood in the City of San Pablo.  
13 Residential housing borders the Property to the north and to the  
14 east. Giant Road, the Santa Fe Railroad right-of-way and open  
15 pasture border the Property to the west; to the east lies the  
16 former American Standard manufacturing facility, which now  
17 consists of retail and services oriented businesses.

18 The Property is located approximately 2,500 feet north of Lake  
19 Elementary School. San Pablo Bay lies approximately 0.75 miles  
20 west of the Property.

21

22

23

B.4 General Description of Site Remediation

24 The remedial action for the Former Waste Disposal Area  
25 (FWDA) described as the Property, and Rheem Creek is outlined in  
26 the final Remedial Action Plan (RAP) dated August 30, 1991 and  
27 consists of constructing a containment Cap over the Property and  
lining the adjacent portion of Rheem Creek. The emplacement of

BOOK 174228 184

1 a containment cap and the lining of Rheem Creek with concrete  
2 adjacent to the Property will ensure protection of human health  
3 and the environment by preventing exposure to lead and zinc  
4 containing soils and will control water infiltration preventing  
5 potential migration of these metals to surface or groundwater  
6 while the Cap is maintained.

7  
8 C. Covenantor desires and intends that in order to protect the  
9 present or future public health and safety and the  
10 environment, the Property shall be used in such a manner as  
11 to avoid potential harm to persons or property which may  
12 result from hazardous substances and wastes which have been  
13 deposited on unspecified portion(s) of the Property.

14 ARTICLE I

15 1.01 Provisions to Run With the Land. This Covenant sets forth  
16 protective provisions, covenants, restrictions, and conditions,  
17 (collectively referred to as "Restrictions"), upon and subject  
18 to which the Property and every portion thereof shall be  
19 improved, held, used, occupied, leased, sold, hypothecated,  
20 encumbered, and/or conveyed. Each and all of the Restrictions  
21 shall run with the land, and pass with each and every portion of  
22 the Property, and shall apply to and bind the respective  
23 successors in interest thereof. Each and all of the  
24 Restrictions are imposed on the entire Property unless expressly  
25 stated as applicable to a specific portion of the Property.  
26 Each and all of the Restrictions are imposed pursuant to Section  
27 25355.5 and 25356.1 of Health and Safety Code and run with the  
land pursuant to Section 25355.5. Each and all of the

BOOK 17472P 185

1 Restrictions are enforceable by the Department of Toxic  
2 Substances Control.

3  
4 1.02 Concurrence of Owners Presumed. All purchases, lessees,  
5 or possessors of any portion of the Property shall be deemed by  
6 their purchase, leasing, or possession of such Property, to be  
7 in accord with the foregoing and to agree for and among  
8 themselves, their heirs, successors, and assignees, and the  
9 agents, employees, and lessees of such owners, heirs,  
10 successors, and assignees, that the Restrictions as herein  
11 established must be adhered to for the benefit of future Owners  
12 and Occupants and that their interest in the Property shall be  
13 subject to the Restrictions contained herein.

14 1.03 Incorporation Into Deeds and Leases. Covenantor desires  
15 and covenants that the Restrictions set out herein shall be  
16 incorporated by reference in each and all deeds and leases of  
17 any portion of the Property.

18 ARTICLE II

19  
20 DEFINITIONS

21  
22 2.0 Department. "Department" shall mean the California State  
23 Department of Toxic Substances Control and shall include its  
24 successor agencies, if any.

25 2.02 Improvements. "Improvements" shall mean all buildings,  
26 roads, driveways, regrading, and paved parking areas,  
27 constructed or placed upon any portion of the Property.

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2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

2.05 Director. "Director" shall mean the Director of the California Department of Toxic Substances Control or his or her designee.

2.06 Cap. "Cap" shall mean the protective cover used to isolate contaminated soils on the Property from human or environmental exposure. The Cap will be constructed as outlined in paragraph B.4 of this document and as proposed in the final Remedial Action Plan (RAP) for the Former Waste Disposal Area (FWDA) dated August 30, 1991.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as described in Exhibit 1 as follows:

- a. Development of the Property shall be restricted to commercial or industrial use.

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- b. No residence for human habitation shall be permitted on the Property.
- c. No agricultural use shall be permitted on the Property.
- d. No hospitals, day-care centers, schools, senior citizen centers, or other permanently occupied non-industrial human habitation shall be permitted on the Property.
- e. The entire Property shall be covered with a composite "Cap" as specified in the final RAP dated August 30, 1991 and in paragraph B.4, to prevent exposure of Property contaminants to humans and the environment. Additional walkways, buildings, and landscaping may be emplaced upon the Property as long as they do not interfere with the integrity of the Cap.
- f. The Property shall not be subdivided except as allowed pursuant to Section 25232(a)(2) of the Health & Safety Code.
- g. No disturbance of the soils, such as excavation, grading, removal, trenching, filling, mining, or drilling of gas, oil or water wells shall be permitted on the Property without the express written permission of the Department. Any contaminated soil brought to

BOOK 17472Pc 188

the surface by excavation that may occur on the Property shall be managed as a hazardous waste unless shown otherwise by sampling and analysis.

h. Groundwater monitoring and Cap maintenance shall be carried out pursuant to an approved Operations and Maintenance (O&M) Plan. If contamination is detected in groundwater or the integrity of the Cap is breached, contingency activities shall be implemented pursuant to the approved O&M Plan for remediation. Maintenance and/or repair of the Cap must include proper handling and disposal of contaminated soils if excavated.

i. All uses and development of the Property shall preserve the integrity of the Cap and groundwater monitoring system installed on the Property including periodic inspection, maintenance and repair. In addition, Covenantor promises to comply with the following requirements:

1. The Owner shall notify the Department of each of the following: 1) The type, cause, location and date of any disturbance to the Cap which could affect the ability of the Cap to contain subsurface hazardous substances on the Property, and 2) The type and date of repair of such disturbance. Notification to the Department and a request for any proposed earth moving or excavation shall be made by telephone within 24



1 hours of the discovery of Cap disturbance and by  
2 registered mail within five (5) working days of  
3 both the discovery of Cap disturbance and the  
4 completion of repairs.  
5

6 2. The Department or its designated agents  
7 (including successor agencies) shall have access  
8 to the Property for the purpose of inspection,  
9 surveillance, or monitoring, or other purposes  
10 necessary to protect public health or safety and  
11 the environment as provided in Chapters 6.5 and  
12 6.8 of the Health and Safety Code and Chapter 4  
13 of Division 7 of the Water Code.

14 3.02 Conveyance of Property. The Owner or Owners shall  
15 provide a thirty (30) days advance notice to the Department of  
16 any sale, lease, or other conveyance of the Property or an  
17 interest in the Property to a third person. The Department  
18 shall not, by reason of the Covenant, have authority to approve,  
19 disapprove, or otherwise affect any sale, lease, or other  
20 conveyance of the Property except as otherwise provided by law,  
21 by administrative order, or by reason of this Covenant.

22 3.03 Enforcement. Failure of the Owner to comply with any  
23 of the requirements, as set forth in paragraph 3.01 shall be  
24 grounds for the Department, by reason of the Covenant, to  
25 require that the Owner modify or remove any Improvements  
26 constructed in violation of that paragraph. Violation of the  
27 Covenant shall be grounds for the Department to file civil and  
criminal actions against the Owner as provided by law.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous wastes and hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists".

#### ARTICLE IV

#### MODIFICATION AND TERMINATION

4.01 Modification. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written modification from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the Health and Safety Code, and shall contain the following:

- 1) A statement of who is applying for the modification;
- 2) the proposed modification, and 3) a statement of reasons in support of the granting of the modification. In addition, the owner shall demonstrate to the satisfaction of the Department that the proposed modification will not cause or allow any

of the following effects associated with hazardous substances or hazardous wastes.

- a. The creation or increase of significant present or future hazards to the public health or environment.
- b. Any substantial decrease of the ability to mitigate a significant potential or actual hazard to public health.
- c. Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public and environment.

In addition, the Department could modify land use restrictions if there is sufficient evidence for a finding that:

1. The hazardous wastes or substances which caused the land to be restricted have since been removed or altered in a manner which precludes any significant existing or potential hazard to present or future public health or the environment; or
2. New scientific evidence is available since the land use restrictions were placed concerning the nature of the hazardous wastes or substances or concerning the geology or other physical environmental

B3A 7472Pc 192

characteristics of the land that would remove the existing or potential hazard to present or future public health or the environment.

Upon making a decision to approve or deny the proposed modification, the Director shall issue and cause to be served the decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other interested persons. If the Department agrees to the proposed modification, the Director and all of the Owners of the land shall execute an instrument reflecting this agreement, shall particularly describe the real property affected by the instrument, and the Owner(s) shall record the instrument in the county in which the land is located within ten (10) days of the date of execution.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234 of the Health & Safety Code, and Paragraph 4.01 and shall contain the following:

- 1) A statement of who is applying for the termination; 2) the proposed termination, and 3) a statement of reasons in support of the granting of the termination. In addition, the Owner shall demonstrate to the

satisfaction of the Department that the proposed termination will not cause or allow any of the following effects associated with hazardous substances or hazardous wastes.

- a. The creation or increase of significant present or future hazards to the public health or environment.
- b. Any substantial decrease of the ability to mitigate a significant potential or actual hazard to public health or environment.
- c. Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public and environment.

In addition, the Department could terminate land use restrictions if there is sufficient evidence for a finding that:

1. The hazardous wastes or substances which caused the land to be restricted have since been removed or altered in a manner which precludes any significant existing or potential hazard to present or future public health or the environment; or
2. New scientific evidence is available since the land use restrictions were placed concerning the nature of the hazardous wastes or substances or concerning the geology or other physical environmental

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1 characteristics of the land that would remove the  
2 existing or potential hazard to present or future  
3 public health or the environment.  
4

5 Upon making a decision to approve or deny the proposed  
6 termination, the Director shall issue and cause to be  
7 served the decision and findings of fact on the Owner of  
8 the land, the legislative body of the city or county in  
9 whose jurisdiction the land is located, and upon any other  
10 interested persons. If the Department agrees to the  
11 proposed modification, the Director and all of the Owners  
12 of the land shall execute an instrument reflecting this  
13 agreement, shall particularly describe the real property  
14 affected by the instrument, and the Owner(s) shall record  
15 the instrument in the county in which the land is located  
16 within ten (10) days of the date of execution.

16 4.03 Term. Unless terminated in accordance with paragraph  
17 4.02 above, by law or otherwise, this Covenant shall continue in  
18 effect in perpetuity.  
19

20 ARTICLE V

21 MISCELLANEOUS  
22

23 5.01 No Dedication Intended. Nothing set forth herein  
24 shall be construed to be a gift or dedication, or offer of a  
25 gift or dedication, of the Property or any portion thereof to  
26 the general public or for any purposes whatsoever.  
27

1           5.02 Notices. Whenever any person gives or serves any  
2 notice, demand, or other communication with respect to this  
3 Covenant, each such notice, demand, or other communication shall  
4 be in writing and shall be deemed effective 1) when delivered,  
5 if personally delivered to the person being served or to an  
6 officer of a corporate party being served or official of a  
7 government agency being served, or 2) three (3) business days  
8 after deposit in the mail if mailed by United States mail,  
9 postage paid certified, return receipt requested:

10           To: American Standard Inc.  
11                 One Centennial Plaza  
12                 P.O. Box 6820  
13                 Piscataway, New Jersey 08855-6820

14           Copy to: Department of Toxic Substances Control  
15                 Region 2  
16                 Site Mitigation Branch  
17                 700 Heinz Avenue, Suite 200  
18                 Berkeley, California 94710  
19                 Attention: Project Officer, American Standard  
20                         Products Site

21           Copy to: Department of Toxic Substances Control  
22                 Technical Services Branch  
23                 8950 Cal Center Drive  
24                 Building 3, Suite 101  
25                 Sacramento, California 95826  
26  
27

1           5.03   Partial Invalidity.   If any portion of the  
2 Restriction set forth herein or terms is determined to be  
3 invalid for any reason, the remaining portion shall remain in  
4 full force and effect as if such portion had not been included  
5 herein.

6  
7           5.04   Article Heading.   Headings at the beginning of each  
8 numbered article of this Covenant are solely for the convenience  
9 of the parties and are not a part of the Covenant.

10          5.05   Recordation.   This instrument shall be executed by  
11 the Covenantor and the Director, California Department of Toxic  
12 Substances Control. This instrument shall be recorded by the  
13 Covenantor in the County of Contra Costa within ten (10) days of  
14 the date of execution.

15          5.06   References.   All references to Code sections include  
16 successor provisions.

17  
18 IN WITNESS WHEREOF, the parties execute this Covenant as of the  
19 date set forth below.

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OWNER

American Standard Inc.

By: Frederick W. Jaqua

Title: Vice President, General Counsel  
& Secretary

Date: March 25, 1992

DEPARTMENT OF TOXICS SUBSTANCES CONTROL

By: Howard K. Hatayama  
Administrator  
Region 2

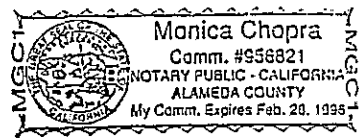
Date: 4/3/92

17472Pc 138

1 STATE OF CALIFORNIA )  
2 )  
3 COUNTY OF ALAMEDA )  
4 )  
5 )

6 On April 3, 1992 before me, the undersigned, a  
7 Notary Public in and for said state, personally appeared Howard  
8 K. Hatayama, personally known to me or proved to me on the basis  
9 of satisfactory evidence to be the person who executed the  
10 within instrument as Administrator of Region 2, of the  
11 Department of Toxic Substances Control, the Agency that executed  
12 the within instrument, and acknowledged to me that such Agency  
13 executed the same.

14 WITNESS my hand and official seal.



17 Monica Chopra  
18 Notary Public in and for said  
19 County and State  
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STATE OF NEW YORK

COUNTY OF New York

On March 25, 1992 before me, the undersigned, a Notary Public in and for said state, personally appeared Frederick W. Jaqua, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice President, General Counsel, and Secretary, of American Standard Inc., the Company that executed the within instrument, and acknowledged to me that such Company executed the same.

WITNESS my hand and official seal.

Shirley A. Vickerman

Notary Public in and for said  
County and State

SHIRLEY A. VICKERMAN, NOTARY PUBLIC  
State of New York, No. 03-4884443  
Qualified in Bronx County  
Cert. Filed in New York County  
Commission Expires 7/22/92

BOOK 17472P 199

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EXHIBIT 1

LEGAL DESCRIPTION OF SITE

AND

ASSESSOR'S PARCEL MAPS

BOOK 17472PC 201

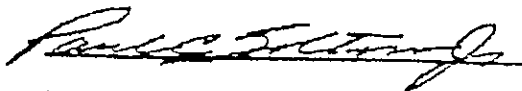
LEGAL DESCRIPTION

Parcel "A", as shown on that certain Parcel Map of Minor Subdivision 778-82 recorded on September 17, 1982 in Book 102 of Parcel Maps at Pages 46, 47 & 48 in Official Records of Contra Costa County, California, more particularly described as follows:

Beginning at the northwesterly corner of Parcel "A" (102 PM 46), said point being the intersection of the south line of Palmer Avenue and the east line of Giant Road; thence, south  $12^{\circ} 17' 00''$  west, 219.71 feet; thence, north  $77^{\circ} 57' 01''$  east, 99.47 feet; thence, north  $85^{\circ} 05' 01''$  east, 145.80 feet; thence, along the arc of a curve to the right with a radius of 174 feet, through a central angle of  $68^{\circ} 56' 15''$ , 209.35 feet; thence, south  $25^{\circ} 58' 44''$  east, 24.00 feet; thence, along the arc of a curve to the right, with a radius of 344 feet, through a central angle of  $17^{\circ} 39' 18''$ , 106.00 feet; thence, north  $12^{\circ} 18' 57''$  east, 304.43 feet to the south line of Palmer Avenue; thence, along said south line, north  $77^{\circ} 41' 00''$  west, 484.84 feet to the point of beginning, comprising an area of 1.90 acres, more or less.

SURVEYOR'S CERTIFICATE

I hereby certify that this survey made under my supervision on October 6, 1987 correctly shows the relation of buildings and other structures to the property lines of the land indicated hereon; that the walls of said buildings are plumb and that there are no encroachments of adjoining buildings or structures onto said land, nor overlap of buildings or structures from said land, except as shown.



PAUL C. SOLTOW, JR.

R.C.E. 10,731

EXP. 12-31-88

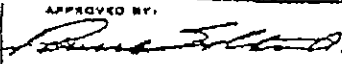
**A.L.T.A. SURVEY**

W/CENTRAL ENGINEERING, INC.

reet

A. 94804

(415) 222-2100

PARCEL "A"		
102 PM 46 - SAN PABLO		
SCALE 1"=40'	APPROVED BY: 	DRAWN BY PLIPS
DATE 10-9-87		REVISED
FOR: PROPERTIES OF DISTINCTION		
2883 DODGE AVE., PINOLE		
FB. 132		DRAWING NUMBER

PALMER AVE. (50')

SEE DETAIL

FD. REBAR, CAP  
RCE 10.731

N 77° 41' 00" W  
184.84 M. & M.

g between gates 17' wide

SAMPLING WELLS

PARCEL "A"

1.80 ACRES

GIANT RD. (RD. NO. 21) 40'

FD. REBAR, CAP 219.71 M. & M.

SAMPLING WELLS

SAMPLING WELLS  
N 85° 05' 01" E  
145.80 M. & M.

FD. REBAR, CAP  
RCE 10.731

N 77° 41' 01" E  
99.47 M. & M.

CONTRA COSTA COUNTY  
DEDICATED FOR DRAINAGE PURPOSES

R=174' Δ=68° 56' 15" L=209.35'

FD. REBAR, CAP  
RCE 10.731

525.58 M. & M.  
24.00 M. & M.

R=344' Δ=17° 39' 18" L=106.00'

PARCEL "B"  
102 PM AG

BOOK 17472 PG 202

FD. REBAR, CAP  
RCE 10.731

EXHIBIT 2

Potential Health Effects of Site Contaminants

BOOK 17472P 203

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3  
4 Lead Depending on the dose, exposure to lead via ingestion or  
5 inhalation may produce anemia, fatigue, headache, aching bones  
6 and muscles, abdominal pains, and constipation. Short-term  
7 exposure to a sufficient dose of lead can cause reversible  
8 kidney damage. Chronic lead toxicity may affect the red blood  
9 cells and their precursors, the central and peripheral nervous  
10 systems and the kidneys (Sax, N.I., 1984, Dangerous Properties  
11 of Industrial Materials, 6th ed., New York: Van Nostrand  
12 Reinhold Co.). The most serious effects associated with  
13 markedly elevated blood levels of lead are severe neurotoxic  
14 effects that include irreversible brain damage, as presented  
15 by occurrence of acute or chronic encephalopathic symptoms.  
16 Lead is listed as a reproductive toxicant by the State of  
17 California under Proposition 65. When lead is ingested, much  
18 of it passes through the body unabsorbed, and is eliminated in  
19 the feces. Most of the lead that is absorbed goes to the  
20 liver and is excreted, in part, in the bile. For this reason,  
21 larger amounts of lead are usually necessary to cause toxic  
22 effects by this route than by inhalation, and a longer period  
23 of exposure is usually necessary to produce symptoms. Adults  
24 absorb about 5-15% of ingested lead and regain less than 5%.  
25 Children absorb about 50% and retain about 30%. (Lewis, R.J.,  
26 1991, Hazardous Chemicals Desk Reference, 2nd ed., New York:  
27 Van Nostrand Reinhold Co.)

83K 17472P 204

1 Zinc Zinc may be absorbed by inhalation or ingestion.  
2 Approximately 80% of ingested zinc is excreted in the feces.  
3 Zinc and zinc compounds at sufficient concentrations are human  
4 skin and eye irritants, while inhaling zinc powder(s) can  
5 cause pulmonary edema (Sax, 1984). Zinc is an essential  
6 element for human nutrition and is distributed throughout the  
7 body. The major concern for zinc is its effect on aqueous  
8 biota. Lethal doses of zinc cause death through gill necrosis  
9 and hypoxia (Rand, Gary and Petrocelli, Sam, eds., 1985,  
10 Fundamentals of Aquatic Toxicology, Washington, D.C.:  
Hemisphere Publishing).